

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the Matter of:

FAIRBANKS CAPITAL CORP.
Registration No. FR 0703
Registration No. SR 0389
Respondent.

Docket No. EX 2003-001

**STIPULATION TO ENTRY OF A CONSENT ORDER
AND CONSENT ORDER REQUIRING
COMPLIANCE**

STIPULATION TO ENTRY OF THE CONSENT ORDER

Fairbanks Capital Corp. ("Fairbanks") and the Office of Financial and Insurance Services ("OFIS") stipulate to the following:

1. Staff of OFIS conducted an on-site investigation of Fairbanks commencing on December 9, 2002, pursuant to § 11(2)(c) of the Mortgage Brokers, Lenders & Servicers Licensing Act ("MBLSLA"), MCL 445.1661(2)(c), and § 6b(2)(b) and (c) of the Secondary Mortgage Loan Act ("SMLA"), MCL 493.56b(2)(b) and (c). The on-site portion of the investigation of Fairbanks concluded on December 19, 2002. The OFIS investigation sought to determine whether violations of the MBLSLA and SMLA occurred as alleged in numerous consumer complaints received by OFIS. The investigation also sought to determine the adequacy of Fairbanks's management to address the alleged violations of the MBLSLA and SMLA, and to review policies, procedures, and overall compliance with applicable Michigan and federal statutes, regulations, and rules. Based upon the investigation, the OFIS staff alleged that violations of both the MBLSLA and SMLA occurred.

2. On or about March 25, 2003, OFIS served Fairbanks with a Notice of Opportunity to Show Compliance and Notice of Opportunity for Informal Meeting ("NOSC") with the provisions of the MBLSLA, MCL 445.1651 *et seq.*, and the SMLA, MCL 493.51 *et seq.*

3. The NOSC alleged violations of provisions of the MBLSLA, SMLA, 1964 PA 110, and the Michigan Consumer Protection Act, MCL 445. 901 *et seq.* The NOSC also alleged violations of §§ 805(a)(2), 806(2) and (5), and 808(1) of the Fair Debt Collection Practices Act, 15 USC 1692(a)(2), 1692d(2) and (5), and 1692f(1), respectively. The NOSC also alleged violations of 26 CFR 1.6050H-1(a)(1) and (2)(a) of the Internal Revenue Service Regulations. As a result of the alleged violations of the Fair Debt Collection Practices Act and the Internal Revenue Service Regulations, the NOSC alleged derivative violations of the MBLSLA and SMLA. The NOSC also set forth the applicable laws alleged to have been violated and the penalties that could be imposed against Fairbanks for violations of these laws.

4. At Fairbanks's request, an informal conference was held between representatives of Fairbanks and staff of OFIS on May 8, 2003. Prior to the informal conference, Fairbanks filed a written response to the NOSC by letter dated May 5, 2003. Subsequent to the informal conference, Fairbanks submitted an additional response by letter dated July 17, 2003.

5. OFIS staff continued its investigation after the informal conference, including a review of the written responses to the NOSC, dated May 5, 2003 and July 17, 2003. OFIS staff presented the results of its ongoing investigation of its allegations against Fairbanks by letter dated September 12, 2003 addressed to Fairbanks. OFIS' September 12 letter responded to Fairbanks's letters of May 5, 2003 and July 17, 2003 and indicated where OFIS agreed with Fairbanks's response and where it disagreed. It also requested additional documentation and information. The letter also provided suggestions from OFIS to Fairbanks to reduce the number of possible future violations by Fairbanks and set forth additional violations not previously

identified in the NOSC. Fairbanks submitted additional responses by correspondence dated October 18, 23, 27, 31, and December 22, 2003.

6. The Commissioner of OFIS has jurisdiction and authority under the provisions of the Michigan Administrative Procedures Act, MCL 24.201 *et seq.*, the MBLSLA and SMLA to accept this Stipulation and proposed Consent Order and to issue a Consent Order resolving these proceedings.

7. Fairbanks was registered with OFIS pursuant to the provisions of the MBLSLA on January 20, 1998. Fairbanks was registered with OFIS pursuant to the provisions of the SMLA on September 30, 1998. OFIS was advised by letter dated December 27, 2001, of a previous change in ownership of Fairbanks Capital Holding Corp., the 100% owner of Fairbanks. The transaction resulted in a cumulative change in ownership of more than 25%.

8. Fairbanks, as a registrant, knew that it was required to comply with all provisions of the MBLSLA, the SMLA and other applicable Michigan and federal laws applicable to it.

9. Based upon OFIS' investigation and the evidence presented by Fairbanks, OFIS alleged the following:

A. Fairbanks failed to service mortgage loans in accordance with the mortgage contracts by, *inter alia*, failing to properly administer escrow accounts, applying secondary mortgage loan payments to first mortgage loan accounts, incorrectly processing the amount of payments, failing to post payments timely, and misapplying payments, and obtaining third party services and billing borrowers for these services prior to the legitimate acceleration of the mortgage loan. Examples of borrowers whose mortgage loans allegedly were not serviced in accordance with the mortgage contracts include:

Account No.

0001692045
2578490
3006812881
2065923233 and 2065970176
2023951763
1607852
1497973
2076589668
2060234511
2073569002
1687631
2048788805
0002147528
2055422618
2017908803
3019092901
0001607852
3001982598
3013743624
2068343298
2054005695
0001375880
2044163430
1377498
8112032639
0001689959
0002321347
001469865
3065920676
2037995905
0001691401
2084626734
2066206786 & 2066207024
8111025980
8790339926
2068442454 & 2072755891
2058918828
4000798092
0001346717
2147387
2039596248
0002426386
2066037819
2022921833
1775600
2030815365

0002547594
2083417036
2044421416
2045602311
2046856163
2083798690
8790602265

OFIS has alleged that these facts represent a violation of §22(a) of the MBLSLA, MCL 445.1672(a) to the extent that the account numbers identified above represent first mortgage loan contracts and a violation of §25 of the SMLA, MCL 493.75 because Fairbanks services the secondary lien mortgage contracts of the borrowers on accounts numbers 2065923233 and 2065970176 identified above.

- B. Fairbanks' employees have engaged in harassing and abusive conduct in the collection of debts in violation of § 806(2) and (5) of the Fair Debt Collection Practices Act, 15 USC 1692(d)(2) and (5), which OFIS has alleged is a violation of §22(a) of the MBLSLA, MCL 445.1672(a). Examples of borrowers who were allegedly subjected to harassing and abusive conduct include:

Account No.
2044163430
2054005695

Engaging in harassing and abusive conduct in the collection of debts violates terms of § 806(2) and (5) of the Fair Debt Collection Practices Act, 15 USC 1692(d)(2) and (5), and, as a result, is a violation of §22(a) of the MBLSLA, MCL 445.1672(a).

- C. Fairbanks imposed a "payoff statement fee" of \$50.00 upon borrowers. The mortgages and promissory notes of such borrowers do not contain provisions for the imposition of such a charge. Examples of borrowers who were charged a "payoff statement fee" include:

Account No.
 3019092901
 2065923233
 0001692045
 2085653190
 0002147528
 3006812881
 3013743624
 2044421416
 001689959
 055422618
 044163430
 006812881
 790602265
 2060234511
 0002147528
 2017908803
 2076589668
 2073569002

By collecting payoff statement fees not expressly authorized by the debt agreement, Fairbanks has allegedly violated the terms of §808(1) of the Fair Debt Collection Practices Act, 15 USC 1692f(1) and Michigan common law, and, as a result, violated §22(a) of the MBLSLA, MCL 445.1672.

- D. Fairbanks collected "broker price opinion" fees from borrowers. Such fees are allegedly not expressly authorized by the debt agreements. Examples of borrowers who were charged a "broker price opinion" include:

<u>Account No.</u>	<u>Date</u>	<u>Amount</u>
2044421416	12/06/00	100.00
	10/08/01	100.00
	01/11/02	105.00
0001689959	05/14/01	100.00
2055422618	06/21/01	100.00
2044163430	02/09/01	100.00
	03/09/01	100.00
	02/26/02	130.00
2083798690	05/14/01	100.00
	09/13/02	105.00
3006812881	05/14/01	100.00

	12/24/01	105.00
	06/03/02	105.00
	12/10/02	105.00
8790602265	09/09/02	105.00
2060234511	03/02/01	100.00
	12/03/01	105.00
	05/14/01	100.00
	06/02/02	105.00
2085653190	12/21/00	100.00
	07/30/01	100.00
	12/03/01	105.00
0001375880	07/12/01	250.00
	07/18/01	175.99
	07/25/01	110.26
	07/30/01	100.00
8112032639	09/04/02	105.00
2017908803	05/09/02	110.00
0002207108	12/14/01	105.00

By collecting broker price opinion fees not expressly authorized by the debt agreement, Fairbanks has allegedly violated §808(1) of the Fair Debt Collection Practices Act, 15 USC 1692f(1) and Michigan common law, and, as a result, has allegedly violated §22(a) of the MBLSLA, MCL 445.1672(a), and has violated § 25 of the SMLA, MCL 493.75, as to Account No. 0002207108.

- E. Fairbanks collected a fee from borrowers for sending a "demand letter." This fee is allegedly not expressly authorized by the debt agreements. Examples of borrowers charged by Fairbanks for sending a "demand letter" include:

<u>Account No.</u>	<u>Date</u>	<u>Amount</u>
2044421416	10/11/01	9.85
	12/26/01	9.85
2083798690	10/23/01	9.85
	09/20/02	9.85
3006812881	10/18/01	9.85
	10/19/01	9.85
	11/05/01	9.85
	12/05/01	9.85
	02/26/02	9.85
	02/26/02	9.85

	03/06/02	9.85
	03/28/02	9.85
	04/03/02	9.85
	04/17/02	9.85
	05/20/02	9.85
	6/18/02	9.85
	07/18/02	9.85
	12/03/02	9.85
8790602265	05/20/02	9.85
	08/06/02	9.85
2060234511	11/20/01	9.85
	02/26/02	9.85
	03/28/02	9.85
	04/17/02	9.85
0002147528	10/16/01	9.85
	11/05/01	9.85
	12/05/01	9.85
	02/26/02	9.85
2085653190	11/20/01	9.85
	10/11/01	9.85
	11/20/01	9.85
8112032639	08/05/02	9.85
0002207108	12/05/01	9.85

By collecting demand letter fees that are not expressly authorized by the debt agreement, Fairbanks has allegedly violated the terms of §808 of the Fair Debt Collections Practices Act, 15 USC 1692f(1) and Michigan common law, and, as a result, has allegedly violated §22(a) of the MBLSLA, MCL 445.1672, and § 25 of the SMLA, MCL 493.75, as to Account No. 0002207108.

- F. At the time of the payoff of a loan, Fairbanks, for a period of time, required one monthly payment be held for 30 days, which is allegedly not expressly authorized by the debt agreement. Examples of borrowers who had one monthly payment withheld for 30 days at the time of closing include:

<u>Account No.</u>	<u>Amount Withheld</u>
2085653190	644.17
2046856163	358.22
3013743624	271.85

2044421416	637.03
2068343298	231.50
2055422618	255.75
3006812881	382.91
2044163430	443.54
2083798690	358.99
8790602265	864.00
2060234511	1,347.54
0002147528	2,327.70
2017908803	327.27
2076589668	508.65
2073569002	610.04
0001692045	1,318.07
3019092901	1,318.07

By requiring that one monthly payment be held for 30 days at the time of closing when this requirement is not expressly authorized by the debt agreement, Fairbanks has allegedly violated §808(1) of the Fair Debt Collections Practices Act, 15 USC 1692f(1), and Michigan common law, and, as a result, has allegedly violated section 22(a) of the MBLSLA, MCL 445.1672.

- G. Fairbanks has collected \$32.00 for the preparation of a mortgage discharge and \$9.00 for the filing of a mortgage discharge from borrowers at the time they paid off their mortgage loans. Such fees are allegedly not expressly authorized by the debt agreement. Examples of borrowers who were charged such fees by

Fairbanks include:

<u>Account No.</u>	<u>Preparation Of Discharge</u>	<u>Filing of Discharge</u>
2085653190	32.00	9.00
0001692045	32.00	9.00
3013743624	32.00	9.00
2044421416		9.00
2055422618	32.00	9.00
3006812881	32.00	9.00
8790602265	32.00	9.00
2060234511		9.00
0002147528		9.00

2017908803		9.00
2076589668	32.00	9.00
2073569002		9.00
0002207108	32.00	18.00
8111021666		9.00

By collecting fees that are not expressly authorized by the debt agreement,

Fairbanks has allegedly violated §808(1) of the Fair Debt Collections Practices Act, 15 USC 1692(f) and Michigan common law, and, as a result, has allegedly violated §22(a) of the MBLSLA, MCL 445.1672, and § 25 of the SMLA, MCL 493.75, as to Account Nos. 0002207108 and 8111021666. In addition, Fairbanks has violated P.A. 110 of 1964, MCL 565.41 by imposing filing fees.

H. Fairbanks has allegedly provided Michigan borrowers with vague and inconsistent information on their mortgage loan accounts, including the amount owed on the accounts and on the terms of forbearance agreements causing confusion and misunderstanding about the terms or conditions of the borrowers' credit, legal rights, obligations, or remedies. Examples of borrowers who were allegedly provided with vague and inconsistent information on their mortgage accounts or forbearance agreements include:

Account No.
 2085653190
 2044163430
 2073569002
 2060234511
 2054005695
 2058918828

By providing Michigan borrowers with vague and inconsistent information on their mortgage loan accounts, Fairbanks has allegedly created a probability of confusion and misunderstanding in violation of §3(1)(n) and (o) of the Michigan

Consumer Protection Act, MCL 445.903(1)(n) and (o) and, has allegedly also violated §22(a) of the MBLSLA, MCL 445.1672(a).

- I. Fairbanks allegedly failed to pay damages and interest on those damages to a borrower on Account No. 2045602311, according to the terms of a valid Michigan court order. Failure to pay in accordance with a court order is a violation of section 22(j) of the MBLSLA, MCL 445.1672(j).
- J. Fairbanks has allegedly provided Internal Revenue Service 1098 statements to Michigan borrowers containing incorrect figures. Examples of borrowers who were allegedly provided Internal Revenue Service 1098 statements with incorrect figures include:

Account No.
0002321347
2065970176
3004505024

Providing incorrect amounts on annual statements and Internal Revenue Service 1098 statements is a violation of § 24(1) of the MBLSLA, MCL 445.1674(1) and IRS Regulations, 26 CFR 1.605H-2(a), and, therefore, is a violation of § 22(a) of the MBLSLA, MCL 445.1672(a), and § 25 of the SMLA, MCL 493.75, as to Account No. 3004505024.

- K. Prior to December 27, 2001, a cumulative change in ownership of more than 25% of Fairbanks Capital Holding Corp., the 100% owner of Fairbanks, took place. This change in ownership took place without the consent of the Commissioner. The transfer of a registration, without the consent of the Commissioner, is a violation of § 9 of the MBLSLA, MCL 445.1659(1) and is also a violation of § 13(2) of the SMLA, MCL 493.63(2). Thus, Fairbanks is allegedly currently

conducting unauthorized mortgage servicing business in Michigan without the necessary license or registration, in violation of § 2(1) of the MBLSLA, MCL 445.1652(1) and § 2(1) of the SMLA, MCL 493.52.

- L. Fairbanks allegedly failed to provide documentation to OFIS in direct response to requests for documentation made in order to determine that a mortgage loan was serviced in compliance with a mortgage contract. On several occasions, in response to requests by OFIS staff, Fairbanks allegedly failed to provide copies of discharges of mortgage pertaining to several paid off, first-position and secondary lien mortgage loans. Examples where Fairbanks allegedly failed to provide requested documentation for specific borrowers include:

<u>Account No.</u>
2060234511
0002321347
8111021666
3004505024
0002207108
8785228696

The failure to maintain business records to enable the Commissioner to determine compliance with the MBLSLA is a violation of § 21(1) of the MBLSLA, MCL 445.1671(1). Failure to provide information in response to a direct request from OFIS within a reasonable time violates § 24(2)(d) of the SMLA, MCL 493.74(2)(d), and § 22(g) of the MBLSLA, MCL 445.1672(g) as to Account Nos. 2060234511 and 0002321347.

- M. Fairbanks allegedly failed to respond to Michigan consumer complaints, in writing, by the date requested by OFIS. Examples include:

<u>Account No.</u>	<u>for Response</u>
2065923233	06/19/02

8112051169	12/17/02
	*01/24/03
0001607852	*01/24/03
	**02/06/03
0002178242	01/09/03
	*01/24/03
2075802021	01/09/03
	*01/24/03
4000738460	01/14/03
	*03/04/03
2085653190	01/08/02
	*07/19/02
	07/24/02
3001982598	05/06/02
0002190353 &	11/27/02
0002190379	*12/13/02
2044421416	03/14/02
2044163430	11/30/01
3006812881	04/22/02
2083417036	11/07/02
	*11/27/02
	*01/16/03
	*02/12/03
3020337774	12/30/02
7001362107	01/03/03
	*02/28/03
0002917425	02/28/03
0003539673	03/07/03
2030994707	03/07/03
2055242933	03/07/03
2072636018	12/06/02
	*12/13/02
8111033562	12/10/02
	*12/23/02
0002942290	12/30/02
2038893679	01/03/03
2068442454 &	
2072755891	*01/10/03

*Date of Letter-Response was requested immediately

** Date of Letter – No deadline given

The failure to provide responses to complaints, in writing, as requested by OFIS,
violates § 22(g) of the MBLSLA, MCL 445.1672(g).

- N. Fairbanks has allegedly only retained the two or three most recent monthly "mortgage loan statements" sent to each borrower. The failure to preserve all other monthly mortgage loan statements violates § 21(2) of the MBLSLA, MCL 445.1671(2). In addition, without the ability to examine all monthly statements provided to borrowers, OFIS cannot determine if Fairbanks has billed borrowers in accordance with mortgage loan contracts, which is a violation of § 21(1) of the MBLSLA, MCL 445.1671(1).
- O. Fairbanks allegedly charged the incorrect number of days of interest for Account Nos. 3004505024 and 8111021666 at the time each loan was paid off. By charging an improper number of days' interest, Fairbanks has allegedly violated § 21(1) of the SMLA on these secondary lien mortgages, MCL 493.71(1).
10. The Commissioner retains jurisdiction over the matters addressed in this Stipulation and has authority to issue further orders as she shall deem just, necessary and appropriate, in accordance with the MBLSLA and SMLA.
11. Fairbanks agrees that it will pay to the State of Michigan \$97,473.63 for investigation expenses, including travel expenses, incurred by the staff of OFIS. The investigation expenses shall be paid on or before 60 days after the date of entry of the attached Consent Order.
12. Fairbanks disagrees with each of the allegations of OFIS set forth above and denies that it has violated the laws of the State of Michigan and contends that its business practices are, and were, in accord with all applicable state requirements. Nevertheless, in the interest of resolving the issues raised by OFIS, Fairbanks has agreed to enter into this Stipulation, which shall resolve all violations alleged in the NOSC, and will not be deemed an

admission by Fairbanks of any violation of any Michigan statute or other law or regulation.

CORPORATE ADVANCES AND FEES

13. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Charging corporate advances and interest on corporate advances to borrowers unless permitted by the terms of the underlying loan documents.

(b) Charging fees for property inspections, *provided that*, Fairbanks may impose reasonable fees for property inspections actually performed if:

1) The consumer's loan payment has not been received within forty-five (45) calendar days of the due date; and

2) The inspections are limited to the initial inspection and to additional inspections during the period of continued delinquency not more frequent than every thirty (30) calendar days and only if Fairbanks:

(i) Has been unable to contact the consumer for the previous thirty (30) calendar days; or

(ii) Has been able to contact the consumer but has determined the mortgaged property is vacant.

(c) Charging fees for broker price opinions, *provided that*, Fairbanks may impose reasonable fees for a broker's price opinion ordered and actually performed if:

(i) the consumer's loan payment has not been received within sixty-three (63) calendar days of the due date; and

(ii) the broker's price opinions are limited to the initial broker price opinion and to additional broker's price opinions during the period of continued delinquency not more frequent than every six (6) months.

(d) Charging fees for demand letters or any other collection letters or notices.

(e) Charging attorneys' fees, *provided that*, Fairbanks may impose reasonable attorney's fees if:

- 1) the fees are necessary to process a foreclosure sale of the property or are in connection with a bankruptcy, forbearance, or otherwise in enforcement of rights under the loan documents, or otherwise permitted by paragraph 13(h) of this Stipulation;
- 2) a law firm has performed the services; and
- 3) a law firm has charged Fairbanks for the services.

(f) Charging Michigan borrowers for the preparation or filing of mortgage discharges. OFIS shall issue a public directive that OFIS interprets Section 22(a) of the MBLSLA to mean that the originator, owner or servicer of a loan cannot assess to the account of, or collect from, a consumer who is obligated on a mortgage loan secured by real property situated in the State of Michigan a fee in connection with the preparation of a release or discharge of mortgage, or the cost to record such release or discharge and, provided further, that to the extent that the law of the State of Michigan subsequently changes with respect to the assessment and collection of such fees and costs, Fairbanks shall be entitled to assess and collect such fees and costs.

(g) Requiring that one additional monthly mortgage payment be held by agents conducting a loan closing in which the new loan will pay off the mortgage loan serviced by Fairbanks, provided that unless Fairbanks receives the entire amount due, in good funds, it shall not be required to deliver a release of the mortgage lien, unless Fairbanks accepts the short payoff as payment in full.

(h) Assessing or collecting any fee unless it is for services actually rendered and is:

- 1) expressly authorized, and clearly and conspicuously disclosed, by the loan instruments and is not prohibited by law;
- 2) expressly permitted by law and not prohibited by the loan instruments;
or
- 3) a reasonable fee for a specific service requested by a consumer that is assessed and/or collected only after clear and conspicuous disclosure of the fee is provided to the consumer and explicit consent is obtained from the consumer to pay the fee in exchange for the service, and such fee is not otherwise prohibited by law or the loan instruments.

(i) Assessing fees for ledger histories except that Fairbanks may assess \$10 for each second and subsequent such history request in any 12-month period.

LATE FEES

14. Fairbanks agrees that it has discontinued, or will immediately discontinue:

- (a) Applying funds received from a Michigan borrower to late fees when the mortgage loan payments are not current, unless first applied to outstanding payments of principal and interest.
- (b) Charging late fees after a loan has been referred to foreclosure.
- (c) Charging late fees when a Michigan borrower and Fairbanks have entered into a written forbearance agreement and the borrower complies with all the terms of the forbearance agreement.

(d) Charging late fees on a full monthly payment that is received prior to the expiration of the applicable grace period unless some or all of a prior monthly payment is outstanding at the time of such payment.

APPLICATION OF PAYMENTS

15. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to accept as of the date of receipt, or to credit effective as of the date of receipt, all amounts paid in connection with a loan against interest and principal due, and before crediting taxes, insurance or fees, *provided, however*, with respect to loans using uniform loan instruments with a "revision date" prior to March, 1999, Fairbanks may apply payments received in accordance with the provisions thereof;

(b) Failing to: (1) accept as of the date of receipt, or to credit effective as of the date of receipt, any monthly payment that is \$25 or less short of the regularly scheduled amount due for principal and interest under the note; and (2) when any such payment is made, advance the loan's monthly payment due date so that the loan is considered current for that payment, *provided, however*, that this requirement shall not apply to loans which have been referred to foreclosure in accordance with the requirements of this Stipulation;

(c) In the event that Fairbanks does not accept a payment, failing to inform the consumer by a written notice sent within three (3) business days of receipt of the payment and enclosing the payment being returned (if any) of the following information in a clear and conspicuous manner, at no cost to the consumer: (1) that the consumer's payment has not been accepted; (2) the reason(s) for declining to accept the payment; (3) the amount the consumer must pay so that the payment will be accepted and credited; and (4) a toll-free phone number for the consumer to call for assistance.

- (d) Misrepresenting, expressly or by implication, any amount that a consumer owes;
- (e) Misrepresenting, expressly or by implication, that any fee is allowed under the loan instruments, permitted by law, or imposed for services actually rendered;
- (f) Misrepresenting, expressly or by implication, the amount, nature, or terms of any fee or other condition or requirement of any loan; and
- (g) Failing to make disbursements of escrow funds for insurance, taxes and other charges with respect to the property in a timely manner.
- (h) Failing to apply payments to the correct Michigan borrower's account.
- (i) Failing to apply payments as described above, unless the loan contract explicitly requires a different application.

LENDER PLACED INSURANCE

16. Fairbanks agrees that it has discontinued, or will immediately discontinue:

- (a) Charging for force placed insurance before mailing, at no cost to the consumer, at least two (2) written notices to the consumer providing clear and conspicuous notice of the procedures by which the consumer may demonstrate that the consumer already has insurance coverage and providing at least thirty (30) calendar days from the mailing (by first-class mail) of the first notice and twenty (20) calendar days from the mailing (by certified mail) of the second notice for the consumer to demonstrate coverage, *provided that*, the second notice shall not be mailed until the first thirty-day period has expired.
- (b) Failing to accept any reasonable form of confirmation from a consumer of existing insurance coverage, including verbal confirmation of the existing insurance policy number along with the identity of the insurance company or agent.

(c) Force placing insurance on a consumer's home when Fairbanks knows or fails to take reasonable actions to determine whether such insurance is already in place.

(d) Failing, within fifteen (15) days of receipt of confirmation of a consumer's existing insurance coverage, to refund all force placed insurance premiums paid during the overlapping coverage period.

(e) Placing a consumer's loan in default, assessing late fees, or initiating foreclosure proceedings solely due to the consumer's nonpayment of insurance premiums, *provided that* the insurance charges may become additional debt of the consumer secured by the security instrument and interest may be charged thereon as provided in the loan instruments.

COMPLAINTS

17. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to maintain and provide adequate staffing for a toll-free phone number and an address that are specifically dedicated to handling consumers' disputes or questions. The toll-free telephone number shall be staffed at least every Monday through Friday between the hours of 7 a.m. to 8 p.m., Eastern Time, national holidays excluded. Fairbanks' obligation to maintain the toll-free number shall expire ten (10) years from the date of entry of the attached order.

(b) Failing to acknowledge in writing any consumer's dispute whether received from the consumer, or any other person (not including OFIS) within twenty (20) calendar days after receiving it, unless it is an oral dispute that has been investigated and resolved with the consumer within twenty (20) calendar days after receiving it, *provided that* Fairbanks maintains written or electronic records of the handling of such oral disputes for the time period required under paragraph 19 of this Stipulation.

(c) Failing to complete an investigation of any consumer's dispute within sixty (60) calendar days after receiving it, unless through the use of reasonable procedures Fairbanks is unable to resolve the dispute in that time period, in which event Fairbanks may take an additional thirty (30) calendar days to resolve the dispute if they so notify the consumer in writing.

(d) Failing to advise the consumer promptly and in writing of the results of the investigation of the consumer's dispute, unless it is an oral dispute that has been investigated and resolved with the consumer within twenty (20) calendar days after receiving it, *provided that* Fairbanks maintain written or electronic records of the handling of such oral disputes for the time period required under paragraph 19 of this Stipulation.

(e) Taking any legal or other action to collect the disputed amount and any related charges until the dispute has been investigated and the consumer has been informed of the results of the investigation.

(f) Threatening the consumer's credit rating or reporting the consumer as delinquent based on the disputed amount until the consumer's dispute has been investigated and the consumer has been informed of the results of the investigation.

(g) This section shall not apply to consumer complaints conveyed to Fairbanks by OFIS which shall continue to be handled in accordance with OFIS's normal procedures.

RECORD RETENTION

18. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to retain and have available for inspection:

- 1) On Michigan mortgage loans currently being serviced, a copy of each mortgage loan document, servicing record, and related electronic data in its possession or control (unless such document can be recreated from Fairbanks' electronic records).
- 2) On Michigan mortgage loans in which the servicing has been transferred or the loan satisfied, a copy of each mortgage loan document, servicing record, and related electronic data in its possession or control for a period of 3 years after the date that the servicing was transferred or the loan was satisfied (unless such document can be recreated from Fairbanks' electronic records).
- 3) Documentation related to Michigan mortgage loans which enables OFIS to determine whether Fairbanks has serviced the loan in accordance with the loan contract, applicable law, and this Stipulation and attached Consent Order.

(b) Failing to create and retain for a period of three (3) years after the date of preparation of the record, the following records:

- 1) Accounting records that reflect the cost of loans acquired and/or sold; revenues generated from servicing fees and/or fees paid by and/or imposed on consumers; and the disbursement of such revenues.
- 2) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable.

- 3) Customer files containing the names, addresses, telephone numbers, dollar amounts paid, and description of fees or other charges imposed.
- 4) Complaints, disputes, and requests from consumers (whether received directly, indirectly or through any third party) and any responses to those complaints, disputes, or requests.
- 5) Copies of all training materials and policy manuals.
- 6) All documentation generated pursuant to paragraph 27 of this Stipulation.

- (c) Failing to provide, upon request by OFIS, in a reasonable time any information which Respondent is required to maintain.

CONSUMER REPORTING AGENCIES

19. Fairbanks agrees that it has discontinued, or will immediately discontinue:

- (a) Furnishing information relating to any consumer to a consumer reporting agency if Fairbanks knows or consciously avoids knowing that the information is inaccurate, as provided in Section 623(a)(1)(A) of the FCRA, 15 U.S.C. § 1681x-2(a)(1)(A).

- (b) Failing to promptly notify a consumer reporting agency, as required by Section 632(a)(2) of the FCRA, 15 U.S.C. § 1681s-2(a)(2), when Fairbanks has determined that information previously furnished about any consumer to the consumer reporting agency is not complete or accurate, and failing to provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided to the agency complete and accurate, and to not thereafter furnish to the agency any of the information that remains not complete or accurate.

(c) Failing to report accounts as “disputed” to consumer reporting agencies, as required by Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3), when consumers dispute accounts either in writing, orally, or by electronic means.

(d) Failing to comply in any other respect with the FCRA, as amended, or as may be amended in the future.

ESCROW

20. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to make timely payments from consumers’ escrow accounts for casualty insurance, property taxes and other charges with respect to the property as such payments become due in accordance with 12 U.S.C. § 2605(g).

(b) Failing to provide annual escrow statements that clearly itemize payments for taxes, insurance premiums, and other separately identified charges in accordance with 12 U.S.C. § 2609(c)(2).

DEBT COLLECTION

21. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Engaging in any conduct, the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

(b) Initiating communication with a Michigan borrower, if the borrower is represented by an attorney and the attorney’s name and address are known, except if the attorney fails to respond within a reasonable time.

(c) Misrepresenting the amount of money owed by Michigan consumers.

(d) Misrepresenting that any fee is allowed by law or under the loan contract, if such fee is not expressly authorized by law or the loan contract.

(e) Using any false, deceptive, or misleading representation in connection with the servicing of a Michigan mortgage loan.

FORBEARANCE AGREEMENTS

22. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Entering into forbearance agreements that are not clear and understandable to a reasonable person.

(b) Entering into forbearance agreements that do not result in the Michigan borrower's account being current upon the borrower's compliance with the agreement; provided, that the forbearance agreement, by its terms, provides for such arrangement.

(c) Charging a Michigan borrower any fees if Fairbanks and the borrower enter into a forbearance agreement and the borrower complies in full with the terms of such agreement.

CUSTOMER SERVICE AND CUSTOMER STATEMENTS

23. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to timely inform the consumer prior to the due date of each monthly payment (by means of a monthly statement or, with the consumer's prior consent, by electronic notification, sent at least twelve (12) calendar days before the payment due date) for each Michigan loan Fairbanks is servicing, at no cost to the consumer, of the following information in a clear and conspicuous manner:

- 1) the unpaid principal balance;
- 2) the monthly payment due as of the next due date and the due date;
- 3) if there are changes(s) in the monthly payment amount and/or other amounts due, the reason for the change(s);

- 4) a complete itemization of each and every fee assessed during the statement period;
- 5) a complete itemization of how any payments from the borrower were applied during the statement period;
- 6) a complete itemization of any monies advanced or paid from escrow on behalf of the borrower during the statement period;
- 7) a toll-free telephone number and address for the consumer to use if s/he disputes any of the information provided; and,
- 8) no later than June 30, 2004, the total amount due.

(b) OFIS agrees that the statement in the form of the Attached Exhibit A satisfies the requirements of paragraph 23 (a) 5) and 6).

(c) Failing to provide accurate and complete information on IRS form 1098 for Michigan borrowers, as required.

TRANSFER OF SERVICING

24. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to take reasonable steps to verify that the delinquent status of a Michigan mortgage loan for which the servicing is transferred to Fairbanks is accurate, which, for purposes hereof, shall consist of the sending of a “validation of debt” letter and the investigation of any dispute by a consumer with respect thereto.

(b) Imposing late fees during the 60-day period beginning on the effective date of the transfer of the servicing of the mortgage loan in violation of 12 U.S.C. § 2605(d).

JUDGMENTS

25. Fairbanks agrees that it has discontinued, or will immediately discontinue:

(a) Failing to pay court-ordered judgments when due unless Fairbanks has contested such judgments in accordance with applicable law.

FORECLOSURE

26. Fairbanks agrees that it has discontinued, or will immediately discontinue:

- (a) Taking any action toward foreclosure until Fairbanks has:
- 1) reviewed any records pertaining to the consumer's loan to verify that the consumer has failed to make three full monthly payments;
 - 2) confirmed that the consumer has not been subject to any of the acts or practices prohibited by this Stipulation, the loan instruments, or law, or if such acts or practices have occurred, that Fairbanks has remedied them; and
 - 3) investigated any disputes by the consumer and informed the consumer of the results of the investigation.

NAME USAGE

27. Fairbanks agrees that it has discontinued, or will immediately discontinue using any name other than Fairbanks Capital Corp. for its Michigan mortgage servicing activities, unless such name is properly registered with OFIS pursuant to Michigan law.

REFUNDS OR CREDITS

28. Fairbanks agrees that it shall remit to OFIS the amount of \$900,000 which amount shall be in addition (a) to the amounts that Fairbanks has agreed to refund or credit pursuant to (i) the Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp. in the case of *United States of America v Fairbanks Capital Corp, et al*, United States District Court for the District of Massachusetts, No. 03-12219-DPW, and (ii) the Settlement Agreement and Release in the case of *Alanna L. Curry et al v*

Fairbanks Capital Corp., United States District Court for the District of Massachusetts, No. 03-10895-DPW, and (b) any fees waived previously by Fairbanks for the benefit of Michigan consumers. The foregoing amount of \$900,000 shall constitute redress to Michigan consumers and shall not constitute a civil penalty. The manner of allocation of such funds shall be determined by OFIS and OFIS shall provide detail to Fairbanks with respect to the identity of those Michigan consumers entitled to such redress and the corresponding redress amount. Fairbanks shall administer the distribution of payments and bear the cost of distribution.

29. Fairbanks shall pay the amount determined in paragraph 28 above into an interest-bearing fund for restitution as determined by the Commissioner of OFIS ("the settlement fund") within one week of the date of the Commissioner's Order. All monies, including interest income, in the settlement fund shall be held in trust for the purposes stated in this Stipulation. Fairbanks shall have no property right, interest, claim, or title to the monies in the settlement fund or any interest earned once they are deposited in the settlement fund. The settlement fund is intended for restitution to borrowers affected by the lending practice referenced in paragraph 9 above. The settlement fund is intended to be a qualified settlement fund within the meaning of the Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

30. When Fairbanks refunds or credits the monies to Michigan borrowers specified in paragraphs 28 and 29 it shall provide the following notice, in writing, to each Michigan borrower receiving a refund or credit:

"This refund (credit) is a result of a settlement between Fairbanks and the Michigan Office of Financial and Insurance Services (OFIS) of a Notice of Opportunity to Show Compliance issued by OFIS on March 25, 2003."

31. Fairbanks agrees that the refunds or credits shall be distributed no later than 45 days after the date of the Consent Order issued by the Commissioner of OFIS, pursuant to this Stipulation.

32. Fairbanks agrees to provide a report to OFIS of all refunds of credits made pursuant to this Stipulation within 15 days of the date specified in paragraph 31 above. The report shall include a complete listing of accounts credited or refunds made, including the borrower name, subject property, loan number, the amount of the refund or credit, and the type of fee(s) refunded or credited according to the terms of this Stipulation. It is agreed that the refund and crediting procedure set forth in paragraphs 28 and 29 above is solely for purposes of allocating the stipulated settlement amount of \$900,000.00 between Michigan borrowers.

MICHIGAN REGISTRATION

33. With respect to Fairbanks' Michigan registrations:

(a) Fairbanks represents that it is approved as a seller or servicer by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC).

(b) Fairbanks represents that it is approved as an issuer or servicer by the Government National Mortgage Association (GNMA).

(c) Fairbanks agrees it will provide notification to OFIS within 5 business days in the event it loses approval with FNMA, GNMA, or FHLMC.

(d) OFIS agrees not to use anything contained in this Stipulation, if Fairbanks is in substantial compliance, as a basis to deny Fairbanks' first mortgage registration application or the requested transfer of its second mortgage registration.

(e) Fairbanks agrees to provide any additional information for the first mortgage registration application or the requested transfer of the second mortgage registration within 15 business days of OFIS' request, which request shall not be unreasonable.

(f) Fairbanks agrees that it will not transfer more than 25% of its ownership, either through one transaction or the cumulative effect of multiple transactions, without prior consent of the Commissioner of OFIS, which consent shall not be unreasonably withheld.

MONITORING

34. With respect to Fairbanks' compliance with this Stipulation, the attached Consent Order, and applicable law:

(a) Fairbanks agrees that OFIS may conduct examinations or investigations, as OFIS deems necessary, to determine Fairbanks' compliance with this Stipulation, the attached Consent Order, and applicable law.

(b) Fairbanks agrees to reimburse OFIS for the actual costs OFIS incurs related to examining or investigating Fairbanks for three (3) years after entry of the attached Consent Order. Such actual costs shall include reasonable travel expenses and personnel costs.

(c) Fairbanks represents that it has implemented the corporate compliance program more fully set forth on the attached Exhibit B.

35. Fairbanks agrees that it shall cease and desist from any and all violations, if any, of the statutes and regulations set forth in paragraph 9 of this Stipulation and agrees to comply with all provisions of the applicable law, rules, and regulations identified in paragraph 8 of this Stipulation.

36. Procedural requirements of the Michigan Administrative Procedures Act, MCL 24.201 *et seq*, MBLSLA, and SMLA have been complied with by both parties.

37. Fairbanks understands and agrees that this Stipulation will be presented to the Commissioner of the Office of Financial and Insurance Services for approval. The

Commissioner may, in her sole discretion, decide to accept or reject this Stipulation. If the Commissioner accepts this Stipulation, Fairbanks waives the right to a hearing in this matter and consents to the entry of the attached Consent Order. If the Commissioner does not accept this Stipulation, Fairbanks waives any objection to the Commissioner holding a formal administrative hearing and making her decision after such a hearing.

38. Failure to abide by the terms and conditions of this Stipulation may, at the discretion of the Commissioner, result in further administrative compliance actions.

39. Fairbanks has had an opportunity to review this Stipulation and have it reviewed by legal counsel.

40. Each of Fairbanks and OFIS agrees to cooperate in good faith with the other with respect to issues that may arise from time to time relative to the interpretation and modification of this Stipulation and, with respect thereto, OFIS acknowledges and agrees that the laws in this State (*i.e.* the Michigan statutes, and interpretative regulations issued pursuant thereto, and relevant judicial rulings issued by a court of competent jurisdiction) may change from time to time, and this Stipulation may need to be prospectively modified accordingly.

41. OFIS acknowledges that by its execution of the attached Consent Order, this Stipulation constitutes a complete release and settlement by the State of Michigan of all claims in connection with the matters alleged in the NOSC. OFIS agrees not to institute any action or proceeding arising out of any claims concerning the matters investigated, except that OFIS may institute an action or proceeding to enforce the terms and provisions of this Stipulation or to act against future violations.

42. OFIS and Fairbanks agree to cooperate in good faith with respect to issues that may arise from time to time concerning the interpretation of this Stipulation. OFIS acknowledges that the laws of the State of Michigan, related regulations and applicable judicial

rulings may change from time to time, and this Stipulation may, upon agreement of the parties, need to be modified accordingly. OFIS agrees that to the extent that Fairbanks enters into a modification of the FTC Consent Order so that, as a result of such modification, the FTC Consent Order would be at variance with the terms of this Stipulation, OFIS shall meet and discuss in good faith with Fairbanks a corresponding modification of this Stipulation.

Dated: _____

Joyce A. Karr
Deputy Commissioner
Conduct Review and Securities Division

Dated: _____

Fairbanks Capital Corp.

By: _____

Its: _____

**CONSENT ORDER ISSUED AND ENTERED THIS
20th DAY OF JULY, 2004
BY LINDA A. WATTERS, COMMISSIONER OF
THE MICHIGAN OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Based on the Stipulation set forth above, IT IS ORDERED that:

1. Notwithstanding that Fairbanks disagrees with each of the allegations set forth in Section 9 of the Stipulation, Fairbanks agrees to cease and desist from violating the SMLA and the MBLSLA, as set forth in paragraph 9, and shall do those things set forth in paragraphs 11 through 42; and
2. Fairbanks shall refund to past Michigan borrowers or credit to current Michigan borrowers a total of nine hundred thousand dollars (\$900,000), as set forth in paragraph 28-33; and
3. Fairbanks shall pay to the State of Michigan, Office of Financial and Insurance Services, investigation expenses, including travel expenses, of ninety-seven thousand, four hundred seventy-three dollars and 63 cents (\$97,473.63). The investigation costs shall be paid on or before sixty (60) days after the date of entry of this Order.



Linda A. Watters
Commissioner
Office of Financial and Insurance Services

Corporate Compliance Program

[to be supplied]